IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 252 of 2003()

OPMV.455/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT: PETITIONER

MATHEW, S/O.JOSEPH,
KALLUVELIL HOUSE,
VANNAPPURAM KARA,
VANNAPPURAM VILLAGE.

BY ADV. SRI.VIJU ABRAHAM
SRI.JOY C. PAUL

RESPONDENTS: RESPONDENTS
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1. BASHEER,
S/O.SAITHUMOHAMMED,
VANIYAPURACKAL HOUSE,
VANNAPPURAM KARA,
VANNAPPURAM VILLAGE.

* RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT APER ORDER DT. 11.6.07 IN I.A. 1118/2007.

2. K.A.AVIRACHAN,
S/O.ANTONY,
KANNAMPUZHAYIL HOUSE,
VANNAPPURAM.

3. THE BRANCH MANAGER,
NATIONAL INSURANCE CO.LTD.,
THODUPUZHA.

BY ADV. SRI.MATHEWS JACOB

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A. NO. 252 OF 2003

Dated this the 11th day of October, 2007

J U D G M E N T

Petitioner in O.P.(MV) 455/98 on the file of the Motor Accidents Claims Tribunal, Thodupuzha, is the appellant. This appeal is filed by the petitioner challenging the award passed by the Tribunal dismissing the original petition filed by him. Petitioner sustained injuries in a motor vehicle accident on 29.8.96. He filed the original petition claiming compensation. It was alleged that while the petitioner was walking along the side of Vannappuram-Thodupuzha road, a mini lorry bearing Reg.No.KL6-8373 driven by the 1st respondent came in a rash or negligent manner and hit against his body and the appellant sustained injuries. The 2nd respondent was the owner of the vehicle and the 3rd respondent, the insurer. The appellant claimed a compensation of Rs.75,000/-. The insurer contended that the accident occurred due to the negligence of the appellant himself. The negligence alleged against the driver was denied. The quantum of compensation claimed was also disputed. The existence of a valid policy was admitted. The Tribunal found that the appellant was entitled to get a compensation of

Rs.12,045. But the claim was dismissed on the ground that the accident occurred due to the negligence of the appellant himself. Challenging that award this appeal is filed.

2. Learned counsel for the appellant argued that finding of the Tribunal that the appellant was solely responsible for the accident is unsustainable. It is argued that the quantum of compensation fixed was also very low.

3. The evidence on record shows that the appellant was walking along the road. The scene mahazar shows that the road is having a width of 3.33. metres. The Tribunal found that the place of occurrence is 1.09 metres east of the western end of the tarred portion of the road and came to the conclusion that the accident occurred while the appellant was crossing the road. The mere fact that the accident occurred while the victim was crossing road alone is not a ground to hold that he alone is responsible for the accident. There is nothing on record to show that the driver of the vehicle was not able to see a pedestrian crossing the road or he made any attempt to slow down the vehicle or stop the same. Therefore the dismissal of the original petition holding that the accident occurred due to the negligence of the appellant is unsustainable.

4. I hold that the accident occurred due to the negligence of the appellant as well as the driver of the lorry and fix the responsibility at 75:25. I do not find any reason to interfere with the quantum of compensation fixed by the Tribunal. So the appellant is entitled to get 75% of that amount, which will come to Rs.9,033.80, which is rounded to Rs. 9,035/- and that amount will carry interest at the rate of 5%. The insurer is directed to deposit that amount in accordance with law.

In the result, the appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover an amount of Rs.9,035/- with 6% interest from the date of petition till the date of realisation. The 3rd respondent is directed to deposit the same. On deposit the appellant can withdraw the amount.

K.PADMANABHAN NAIR, JUDGE

vps

K.PADMANABHAN NAIR, J.

MFA NO.252/03

JUDGMENT

11th day of October, 2007